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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JEFFREY P. SEMEL et al,

Cross-complainants and
Appellants,

v.

AMANDA ASHOURI,

Cross-defendant and
Respondent.

B263937

(Los Angeles County
Super. Ct. No. LC100171)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Huey Cotton, Judge. Affirmed.

Jeffrey P. Semel, in pro. per., and Shirley D. Semel, in pro. per., for
Cross-complainants and Appellants.

Esfandi Law Firm, Simon Esfandi for Cross-defendant and Respondent.

This appeal involves a dispute in a real estate transaction in which the buyer respondent Ashouri Amanda sued the sellers appellants Jeffrey P. and Shirley D. Semel (appellants) for specific performance and breach of contract. Appellants filed a cross-complaint against Ashouri and others for, among other things, abuse of process, civil extortion and violation of the Rosenthal Fair Debt Collection Practices Act (Civ. Code, § 1788 et seq.) (the Rosenthal Act).

The trial court dismissed the three aforementioned causes of action from the cross-complaint pursuant to Code of Civil Procedure¹ section 425.16. Appellants contend the trial court erred by: dismissing the abuse of process claim; dismissing the civil extortion cause of action; concluding the litigation privilege applied to the cause of action for violation of the Rosenthal Act; and dismissing the causes of action in the cross-complaint with prejudice as to all parties. We affirm.

BACKGROUND

Ashouri filed a complaint on April 12, 2013. On May 16, 2013, appellants moved to quash service of the complaint on the ground that service of the summons was not proper. The trial court granted the motion to quash on June 18, 2013, finding the declaration of the process server lacked credibility.

Ashouri filed a first amended complaint on October 28, 2013. The first amended complaint contained causes of action for specific performance, breach of contract, breach of the implied covenant of good faith and fair dealing, negligent misrepresentation and declaratory relief.

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

The Cross-Complaint

On May 8, 2014, appellants filed a cross-complaint, which contained 12 causes of action, including abuse of process and civil extortion. On July 7, 2014, Ashouri moved to strike the abuse of process and civil extortion causes of the cross-complaint under section 425.16.

On October 27, 2014, appellants filed opposition to the motion to strike and a first amended cross-complaint. The first amended cross-complaint contained 14 causes of action, including abuse of process (first), civil extortion (second) and violation of the Rosenthal Act (sixth),² and named as cross-defendants: Ashouri, Coldwell Banker Residential Brokerage Company, Fariba Fouladi (Ashouri's mother and a real estate agent associated with Coldwell Banker), Simon Esfandi (Ashouri's attorney of record in the complaint), Tony Rogell (an unregistered process server) and a number of doe defendants.³ The first amended cross-complaint contained allegations against Alan Mehdiani (Ashouri's agent or partner), who was not named as a cross-defendant, and alleged on information and belief that the named cross-defendants were principals, agents and representatives of each other and acted in concert with one another.

² The first amended cross-complaint also contained causes of action for: violation of the Home Equity Sales Contract Act (Civ. Code, § 1695 et seq.) (third), fraud and deceit (fourth), breach of fiduciary duty (fifth), civil conspiracy (seventh), tortious interference with contract (eighth), rescission (ninth), unfair business practices (Bus. & Prof. Code, § 17200 et seq.) (tenth), implied indemnity (eleventh), comparative indemnity (twelfth), equitable indemnity (thirteenth), and contribution (fourteenth).

³ Ashouri is the only cross-defendant to file a responding brief in this appeal.

The abuse of process cause of action is predicated on allegations that, in April 2013, cross-defendant Rogell signed two separate proofs of service falsely claiming that he had personally served appellants with the complaint and summons. Ashouri, through her attorney Esfandi, filed the false proofs of service with the court, which Ashouri and Esfandi knew were false. In June 2013, Rogell executed a declaration with the court, claiming that he had personally served appellants in April 2013. Ashouri and her attorney allegedly knew that Rogell's June 2013 declaration was false but filed it in opposition to appellants' motion to quash service of the complaint.

The abuse of process claim also alleged that Ashouri's attorney refused to grant a reasonable extension to file a responsive pleading to the complaint in violation of a Los Angeles Superior Court rule, Appendix 3.A, which states in part: "(5) A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving rights that an extension might jeopardize or seeking reciprocal scheduling concessions. A lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint."

The civil extortion cause of action alleged that cross-defendants located appellants' property by searching foreclosure listings. Mehdiani, who was then Ashouri's fiancé, but now is her husband, contacted appellants and offered to buy their property on behalf of Ashouri. After entering into an escrow agreement, cross-defendant Fouladi called appellants and told them that Ashouri would not be able to close escrow pursuant to the agreement and needed a longer period of time to close escrow. Appellants told Fouladi that the deal was off because Ashouri was unable to close escrow. Mehdiani then called appellants and threatened to accuse appellants of civil and

criminal fraud if they failed to go through with the sale of the property. Mehdiani told appellants that they might be liable for punitive damages in a lawsuit. He threatened that appellants might go to jail if the fraud accusation became a criminal matter.

Ashouri and Mehdiani subsequently met with appellants. At the meeting, Ashouri stated that she joined in Mehdiani's accusation of civil and criminal fraud.

Attorney Esfandi sent a letter to appellants, accusing them of bad faith and fraud if they did not complete the sale. The letter, which is attached to the first amended cross-complaint, states that Ashouri performed her duties under the escrow instructions by obtaining loan approval. Appellants "willfully and maliciously repeatedly cancelled attempts" to have the property appraised to complete the sale. Appellants then attempted to cancel the escrow in bad faith. The letter advised that Ashouri was entitled to specific performance of the contract. The letter stated that Ashouri was entitled to damages, which Ashouri would pursue if necessary. The letter also stated that appellants had repeatedly cancelled appraisal appointments. Appellants also claimed that they were the ones who could not wait any longer for the escrow to close. Appellants' conduct constituted bad faith, as well as fraud, which might make them liable for punitive damages and attorney fees.

The sixth cause of action alleged that Ashouri and her attorney are debt collectors and that their letter threatening the lawsuit on the basis of bad faith and fraud violated the Rosenthal Act and Fair Debt Collection Practices Act (15 U.S.C. §1692 et seq.) (FDCPA), which is incorporated into the Rosenthal Act (Civ. Code, § 1788.17). Section 1692e of the FDCPA prohibits a debt collector from making a "threat to take any action that cannot legally be taken or that is not intended to be taken." The letter was

sent without any intention of suing appellants for fraud. A demurrer to Ashouri's cause of action for negligent misrepresentation was sustained without leave to amend.

The Motion to Strike

On November 7, 2014, the trial court concluded that the first amended cross-complaint mooted the special motion to strike, as well as a demurrer that Ashouri had filed. The trial court continued the matter for Ashouri to file a supplemental motion to strike.

In her supplemental motion to strike, Ashouri requested that the trial court strike the causes of action for abuse of process (first), civil extortion (second), and violation of the Rosenthal Act (sixth). Ashouri argued that the actions alleged with respect to the abuse of process and civil extortion claims are protected because they were made in the context of litigation or in anticipation of litigation. Appellants could not establish a probability of prevailing because the abuse of process and civil extortion claims are subject to the litigation privilege in Civil Code section 47 subdivision (b).

Ashouri argued that the claim based on violation of the Rosenthal Act should be struck. Ashouri asserted that the conduct alleged in the cross-complaint of sending a prelitigation letter threatening to accuse appellants of bad faith and fraud and to sue appellants for fraud with a punitive damages request was protected activity. Further, appellants could not establish a probability of prevailing on the merits regarding the act of threatening to sue appellants in a letter protected by the litigation privilege in Civil Code section 47, subdivision (b). In addition, the cross-complaint does not allege that appellants were in debt to Ashouri or any other cross-defendant.

Appellants opposed the motion to strike, arguing that section 425.16 was not applicable because the conduct alleged in the abuse of process and

civil extortion claims are illegal as a matter of law. Appellants asserted the abuse of process cause of action should not be stricken because the gravamen of the cross-complaint is not the false communication. The gravamen is Ashouri's efforts in trying to impair appellants' ability to defend against the lawsuit by coercing a settlement or obtaining a default judgment. The local rules were not just guidelines but have the force of law requiring compliance. Ashouri's attorney attempted to impose a condition on appellants which sought to preclude their substantive rights.

Appellants contended the civil extortion cause of action should not be stricken because Ashouri threatened to accuse appellants of fraud, threatened to sue them and to send them to jail if they did not go through with the sale. Although not alleged in the cross-complaint, in opposition to the motion to strike, Jeffrey Semel declared that appellants met with Ashouri and Mehdiani in person on February 14, 2013. At the time, Ashouri "personally threatened to accuse" appellants of fraud if they did not go through with the sale, "making explicit the threat of criminal prosecution." Citing *Flatley v. Mauro* (2006) 39 Cal.4th 299 (*Flatley*), appellants asserted that extortion is not protected speech, and that the prelitigation letter is illegal within the meaning of Penal Code sections 519 and 529.

Appellants argued that neither section 425.16 nor the litigation privilege apply to the Rosenthal Act violations. In a declaration, Jeffrey Semel stated that appellants owe an actual debt of \$70.20 to Ashouri, which they have offered to pay back to her. The debt was incurred for money that Ashouri used to pay on appellants' behalf to the Department of Building and Safety in the course of escrow.

The trial court granted the motion to strike, concluding the abuse of process cause of action was predicated on protected activity and was barred by the litigation privilege.

The trial court also concluded the civil extortion claim encompassed protected activity because the statements were made in anticipation of litigation. Appellants could not prevail on the extortion claim because there was no evidence of extortion under *Flatley*. The conduct alleged in the cross-complaint was not illegal as a matter of law because there was no allegation that Ashouri threatened to report appellants to prosecuting agencies. The cross-complaint alleged that Mehdiani said an attorney told him that punitive damages in a lawsuit might be available and appellants might go to jail if the fraud accusation became a criminal matter. The allegations did not amount to extortion. The declaration offered in opposition to the motion to strike was simply meant to avoid the consequences of section 425.16. In addition, the litigation privilege bars the claim. The court also ruled the cause of action for violation of the Rosenthal Act should be stricken. The conduct is protected because it involves a prelitigation demand letter sent by an attorney.

Appellants filed a timely notice of appeal from the order striking their claims in the cross-complaint.

DISCUSSION

I. Special Motion to Strike Standards

Section 425.16, subdivision (b)(1) provides: “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has

established that there is a probability that the plaintiff will prevail on the claim.”

Section 425.16, subdivision (e) states: “As used in this section, ‘act in furtherance of a person’s right of petition or free speech under the United States or California Constitution in connection with a public issue’ includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

Section 425.16 is broadly construed so as to protect the constitutional rights of petition and free speech. (§ 425.16, subd. (a); *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119-1121.) The trial court considers two components in deciding whether to grant a special motion to strike. The first component determines whether the defendant has satisfied an initial burden of establishing a prima facie case that the plaintiff’s cause of action arose out of the defendant’s actions in the furtherance of the rights of petition or free speech. (§ 425.16, subd. (b)(1); *Flatley, supra*, 39 Cal.4th at p. 314.)

The second component is considered if defendant establishes the first prong, at which time the burden shifts to plaintiff to establish a probability

that he or she will prevail on the merits. (§ 425.16, subd. (b)(1); *Flatley*, *supra*, at 39 Cal.4th p. 314; *Rusheen v. Cohen* (2006) 1048, 1056 (*Rusheen*).) The plaintiff meets his or her burden by stating and substantiating a legally sufficient claim by making a prima facie showing of facts that would sustain a favorable judgment if the submitted evidence is credited. (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 820 (*Oasis*).) However, a court does not weigh the evidence. (*Flatley*, at pp. 323, 326.) Instead, evidence which is favorable to a plaintiff is accepted as true and a defendant's evidence is only considered to determine if the claim is defeated as a matter of law. (*Ibid.*)

In making its determination, courts are required to “consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (§ 425.16, subd. (b)(2).) Appellate courts review the order granting the special motion to strike de novo. (*Oasis*, *supra*, 51 Cal.4th at p. 820.)

II. The Amended Cross-Complaint

It should be noted that the trial court allowed appellants to file a first amended cross-complaint prior to addressing the section 425.16 motion which challenged the original cross-complaint. The trial court concluded that the first amended cross-complaint rendered moot the section 425.16 motion. A party is not permitted to circumvent a ruling under section 425.16 by amending a challenged pleading in response to the motion. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1293-1294; *Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.)

The trial court should not have allowed the amended pleading without addressing the section 425.16 motion. “Allowing a SLAPP plaintiff leave to amend the complaint once the court finds the prima facie showing has been

met would completely undermine the statute by providing the pleader a ready escape from section 425.16's quick dismissal remedy. Instead of having to show a probability of success on the merits, the SLAPP plaintiff would be able to go back to the drawing board with a second opportunity to disguise the vexatious nature of the suit through more artful pleading. This would trigger a second round of pleadings, a fresh motion to strike, and inevitably another request for leave to amend. [¶] By the time the moving party would be able to dig out of this procedural quagmire, the SLAPP plaintiff will have succeeded in his goal of delay and distraction and running up the costs of his opponent. [Citation.] Such a plaintiff would accomplish indirectly what could not be accomplished directly, i.e., depleting the defendant's energy and draining his or her resources. [Citation.] This would totally frustrate the Legislature's objective of providing a quick and inexpensive method of unmasking and dismissing such suits. [Citation.]" (*Simmons v. Allstate Ins. Co.*, *supra*, 92 Cal.App.4th at pp. 1073-1074.)

Ashouri noted in supplemental papers to the original section 425.16 motion that, with respect to the abuse of process and civil extortion claims, the first amended cross-complaint made additional claims including allegations about Ashouri's then fiancé. However, Ashouri pointed out that the new allegations did not change the analysis or the conclusions in the original motion. The first-amended cross-complaint is predicated upon the same conduct which was challenged in the original cross-complaint with respect to the abuse of process and civil extortion claims. Therefore, appellants made no attempt to disguise the vexatious nature of the pleading. The challenged conduct is predicated upon the same actions by Ashouri and her alleged agent.

With respect to the cause of action predicated upon the Rosenthal Act, it was not in the original cross-complaint so the conduct at issue had not been challenged by the section 425.16 motion. So, appellants could not have been seeking to avoid the motion concerning this claim. Accordingly, although the trial court should not have allowed the amended pleading, we consider the trial court's ruling on the causes of action.

III. The Abuse of Process Claim

Appellants assert that the trial court erred in dismissing the cause of action for abuse of process. The abuse of process claim is predicated on allegations that a process server filed a false proof of service of summons and complaint. In opposition to a motion to quash, Ashouri through her attorney then filed an allegedly false declaration by the process server. The trial court found the process server's declaration "lacked credibility" in quashing the summons. Ashouri's attorney also allegedly violated local rules setting forth standards for parties to grant extensions to file a responsive pleading. The first prong is established because the allegations all arise from conduct or communications in filing and prosecution of a civil complaint, which is a protected activity. (*Rusheen, supra*, 37 Cal.4th at p. 1056.)

Because the alleged wrongful actions involve a protected activity, appellants must establish a probability of prevailing. An abuse of process cause of action requires proof: "the defendant (1) contemplated an ulterior motive in using the process, and (2) committed a willful act in the use of the process not proper in the regular conduct of the proceedings." (*Rusheen, supra*, 37 Cal.4th at pp. 1056-1057; accord, *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1168.)

Ashouri is correct that the action is barred by the litigation privilege in Civil Code section 47, subdivision (b). The litigation privilege in Civil Code

section 47, subdivision (b) applies to any communication: (1) in a judicial proceeding or quasi-judicial proceeding; (2) by a litigant or other participant authorized by law; (3) to achieve the objects of the litigation; and (4) that has some connection or logical relation to the action. (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 211-212.)

The privilege applies to statements that are made preliminary to or in preparation for either a civil or criminal proceeding. (*Rubin v. Green* (1993) 1187, 1194-1195; *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 927.) The privilege is absolute and applies to causes of action for abuse of process. (*Rubin v. Green*, at pp. 1193-1194; *Silberg v. Anderson*, *supra*, 50 Cal.3d at p. 216.)

Ashouri was absolutely privileged to file the declarations in her underlying action without liability for abuse of process. The privilege applies even though appellants claim the declarations were false and fabricated. (Civ. Code, § 47, subd. (b)(2).) “The ‘[p]leadings and process in a case are generally viewed as privileged communications.’” (*Rusheen*, *supra*, 37 Cal.4th at p. 1058, quoting *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 770.) The privilege specifically applies in the context of an abuse of process claim predicated upon allegations that a party filed a false or perjured declaration (*Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1431), including a false declaration of service of process (*Rusheen*, at p. 1058).

The trial court properly determined that the declarations were subject to the absolute privilege of Civil Code section 47, subdivision (b)(2) for communications made in a judicial proceeding. Because Ashouri’s conduct was absolutely privileged, the trial court did not err in granting the special motion to strike the abuse of process cause of action.

IV. The Extortion Claim

Appellants assert that the trial court erroneously struck the extortion claim. The cross-complaint alleged that Ashouri's then-boyfriend and now-husband threatened to accuse appellants of fraud in a lawsuit which might result in criminal fraud and jail if they did not go through with the sale. The communications were made in anticipation of litigation, which involves a protected activity. (*Neville v. Chudacoff* (2008) 160 Cal.App.4th 1255, 1263.)

However, relying on *Flatley, supra*, 39 Cal.4th 299, appellants assert that at least a portion of the statements amounts to extortion, which is not protected speech because it is illegal as a matter of law. (*Id.* at p. 330.)

"Extortion is not a constitutionally protected form of speech." (*Flatley, supra*, 39 Cal.4th at p. 328.) In *Flatley*, an attorney was sued by an entertainer for civil extortion and other claims. (*Id.* at p. 305.) The lawsuit was based on a letter and telephone calls made by the attorney which demanded money to settle claims that the entertainer had raped the attorney's client. (*Id.* at pp. 307-311.) The threats were not limited to filing a lawsuit but also contained threats of disseminating the information to the media. (*Ibid.*) The attorney also threatened to have the entertainer criminally prosecuted or to publish the information if a seven-figure payment was not made. (*Id.* at p. 311.)

Flatley, supra, 39 Cal.4th 299, concluded that the attorney's conduct was extortion as a matter of law. (*Id.* at p. 330.) However, *Flatley* stated that the conclusion was "based on the specific and extreme circumstances of this case." (*Id.* at p. 332, fn. 16.) *Flatley* stated that the "opinion should not be read to imply that rude, aggressive or even belligerent prelitigation negotiations, whether verbal or written, that may include threats to file a

lawsuit, report criminal behavior to authorities or publicize allegations of wrongdoing, necessarily constitute extortion.” (*Ibid.*)

Similarly, extreme circumstances were present in *Mendoza v. Hamzeh* (2013) 215 Cal.App.4th 799. The defendant sent the plaintiff a demand letter requesting \$75,000 or defendant would report plaintiff to a number of state and local prosecutorial agencies and the IRS, as well as to disclosed alleged wrongdoing to vendors and customers. (*Id.* at p. 806.) *Mendoza* concluded that the conduct constituted criminal extortion as a matter of law, which was not a protected activity.

Malin v. Singer (2013) 217 Cal.App.4th 1283 (*Malin*) is more analogous to this case. In *Malin*, an extortion claim was based on a demand letter that sought to force a settlement by threatening to embarrass the plaintiff with allegations of embezzlement and disclosure of sexual secrets of a third party. (*Id.* at pp. 1298-1299.) *Malin* concluded that the letter did not fall within the narrow exception of “a letter so extreme in its demands that it constituted criminal extortion as a matter of law.” (*Id.* at p. 1299.) *Malin* explained that the absence of overt threats to report plaintiff to state or federal authorities distinguished the letter from those in *Flatley* and *Mendoza*. (*Malin*, at p. 1299.)

In this case, the cross-complaint alleged that Mehdiani, acting as Ashouri’s agent, threatened to sue appellants for fraud and that the case might become criminal, causing them to go to jail if they refused to go through with the sale. There is no evidence that Ashouri threatened to report appellants to any state or federal authority. The conduct does not on its face arise to the “extreme” levels in *Flatley* and *Mendoza* such that the conduct is illegal as a matter of law. Accordingly, the statements do not arise to the level of extortion as a matter of law.

The special motion to strike is then subject to analysis under the second prong. Penal Code section 518 defines extortion as “the obtaining of property from another, with his consent, . . . induced by a wrongful use of force or fear” The fear constituting extortion may be induced by a threat to accuse the victim of a crime or “expose, or impute to him . . . a deformity, disgrace, or crime.” (Pen. Code, § 519.) The threat of criminal prosecution in order to induce payment of money qualifies as extortion. (Pen. Code, §§ 518, 519; *People v. Goldstein* (1948) 84 Cal.App.2d 581, 586-587 [threat to have party arrested].)

Appellants assert that they established the probability of prevailing but do not provide argument or analysis. The threat in this case was of a lawsuit without evidence of a wrongful threat of criminal or civil prosecution, which is not extortion. In any event, appellants have not shown that the litigation privilege is inapplicable to this claim. (Civ. Code, § 47, subd. (b); *Malin, supra*, 217 Cal.App.4th at pp. 1300-1302 [litigation privilege applied to demand letter accusing plaintiff of embezzlement].)

V. The Rosenthal Act Violation Claim

Appellants also claim the trial court erred in striking their cause of action based on a violation of the Rosenthal Act. Appellants contend that the letter violated section 1692e of the FDCPA, which prohibits a debt collector from making a “threat to take any action that cannot legally be taken or that is not intended to be taken.” We disagree.

The cross-complaint alleged that Ashouri, through a letter sent by her attorney, threatened to sue appellants for fraud and never did and/or never intended to file a suit for fraud. The conduct in the cross-complaint of sending a prelitigation demand letter sent by an attorney is protected activity.

Citing *Komarova v. National Credit Acceptance, Inc.* (2009) 175

Cal.App.4th 324, appellants contend that activity in this case (an alleged violation of the Rosenthal Act) is not subject of section 425.16 so the activity of sending a prelitigation demand letter cannot be protected as a matter of law. However, the Rosenthal Act expressly states that the term “debt collector” does not include attorneys. (Civ. Code, § 1788.2, subd. (c).) Civil Code section 1788.2 provides, in part: “(c) The term ‘debt collector’ means any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include an attorney or counselor at law.” Thus, the Rosenthal Act does not preclude application of section 425.16 to the conduct or communication in this case of an attorney sending a prelitigation letter.

In any event, appellants also cannot establish a probability of prevailing on their Rosenthal Act violation claim. First, the activity of an attorney sending a prelitigation letter is excluded from the auspices of the Rosenthal Act because the term debt collector does not apply to actions taken by an attorney. (Civ. Code, § 1788.2, subd. (c).)

Second, the cross-complaint does not establish that appellants are even “consumer debtors” within the meaning of the Rosenthal Act. Civil Code section 1788.2, subdivision (f) defines the terms “consumer debt” or “consumer credit” to “mean money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.” There is no evidence that appellants, who were the sellers of property, have consumer debt or credit within the meaning of this statute.

Third, the letter is protected by the litigation privilege. (Civ. Code, § 47, subd. (b); *Jacob v. County of Shasta* (2007) 40 Cal.4th 948, 955-956; *Malin, supra*, 217 Cal.App.4th at pp. 1283, 1301.)

VI. Dismissal with Prejudice

Appellants claim that the trial court erred in dismissing with prejudice each of the causes of action as to all parties, including fictitious defendants, because they may discover incontestable evidence at some point. We need not consider this argument, which is not supported by citation to appropriate authority. (*People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.)

DISPOSITION

The order striking the causes of action for abuse of process (first), civil extortion (second) and violation of the Rosenthal Act (sixth) from the first amended cross-complaint is affirmed. Ashouri is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.